IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1979 OF 2006

Naresh Dhirajlal Shah ..Petitioner

Vs.

Champaklal Gordhandas Vora
since deceased
1. Prakash C. Vora and ors. ..Respondents

Mr. Ketan Parekh i/by K.R. Parekh and Co. for petitioner.

Mr. G.S. Godbole for respondent nos.1 to 3.

CORAM: B.H. MARLAPALLE, J.

Date : March 16, 2007.

P.C.:

1. Heard the learned counsel for the petitioner who has filed Appeal No. 10 of 2003 against a decree passed in R.A.E. & R. 597/1211 of 1996 and while the appeal was pending, he took out Interlocutory Notice No.3356 of 2005 seeking liberty to amend the Written Statement. It was claimed by the appellant-defendant that the landlord-plaintiff had issued an Advocate's notice for the recovery of an amount of Rs.7633/- for

the period from 1/4/1993 till the date of the notice and the said amount of Rs.7633/- has been paid by him without prejudice. As per the defendant this notice and the consequent payment gave him a new cause of action to challenge the original notice on the basis of which the suit was decreed and, therefore, he sought to amend the Written Statement. The Division Bench of the Small Causes Court at Mumbai was pleased to discharge the notice by its order dated 17/12/2005.

2. It is obvious from the perusal of the Advocate's notice as well as the schedule of the payment details from 1/4/1993 to 13/6/2004 that the landlord sought to recover only the difference in the municipal taxes, maintenance and water bill etc. The Lower Appellate Court, therefore, held that the challenge to the composite notice dated 8/1/1996 could not be entertained on this ground, more so there were factual aspects which ought to have been stated in the earlier pleadings. The view taken by the Lower Appellate Court cannot be termed as illegal or perverse so as to call for interference under the supervisory powers of this court under Article 227 of

the Constitution.

3. The petition is, therefore, rejected summarily. Ad-interim order stands vacated. Oral application for stay is rejected.

(B.H. Marlapalle,J.)